

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

JESSIE PICKETT,	:	
	:	NO. 1:03-CV-00200
Petitioner,	:	
	:	OPINION AND ORDER
	:	
v.	:	
	:	
	:	
WANZA JACKSON,	:	
	:	
Respondent.	:	
	:	

This matter is before the Court on the Report and Recommendation of the assigned Magistrate Judge (doc. 11). No objections have been filed thereto. Before the Magistrate Judge was the Petitioner's pro se action for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 and the Respondent's Answer/Return of Writ (Id.). The Magistrate Judge recommends that Petitioner's writ of habeas corpus pursuant to 28 U.S.C. § 2254 be DENIED (Id.). Furthermore, the Magistrate Judge recommends that a certificate of appealability not issue with respect to Petitioner's claims alleged in grounds two and three of his petition and that a certificate of appealability issue with respect to Petitioner's claim alleged in ground one of his petition - specifically, his challenge of the constitutionality of his felony murder conviction based on the underlying offense of felonious assault (Id.). The Magistrate

Judge concludes, recommending that the Court certify pursuant to 28 U.S.C. § 1915(a)(3) that an appeal of any Order adopting this Report and Recommendation would be taken in "good faith", and therefore grant Petitioner leave to appeal in forma pauperis upon a showing of financial necessity (Id.).

The Magistrate Judge reports that the Petitioner alleged three grounds for relief (Id.). First, that his due process and equal protection rights were violated when he was convicted of felony-murder where the underlying felony directly resulted in, or was an integral part of, the homicide (Id.). Second, that the trial court violated his right to due process when it precluded him from introducing evidence relevant to his theory of self-defense as to the lesser offenses (Id.). And, third, that the trial court violated his right to due process when it allowed a non-expert witness to state an opinion that was not rationally based on the perception of the witness or helpful to a clear understanding of his testimony or the determination of a fact in issue (Id.).

As to ground three, the Magistrate Judge recommends that Petitioner is not entitled to relief because he waived the claim of constitutional error and any claim of state-law error (Id.). Ground one is also without merit, opines the Magistrate Judge, because the state appellate court's decision upholding the

constitutionality of Ohio's felony-murder statute comports with, and is reasonable in light of, applicable Supreme Court precedents (Id.). Finally, the Magistrate Judge in a well-reasoned analysis concludes that ground two is not well-taken.

The Petitioner was served with the Report and Recommendation and was therefore afforded proper notice of the Magistrate Judge's Report and Recommendation required by 28 U.S.C. § 636(b)(1)(C), including that failure to file timely objections to the Report and Recommendation would result in a waiver of further appeal. See United States v. Walters, 638 F.2d 947, 949-50 (6th Cir. 1981). The Petitioner has failed to file any objections thereto within the ten days provided for by Fed. R. Civ. P. 72(b) and 28 U.S.C. § 636(b)(1)(C). Pursuant to 28 U.S.C. § 636(b), the Court has reviewed the Report and Recommendation de novo, finding it thoughtful, well-reasoned and proper.

Accordingly, the Magistrate Judge's Report and Recommendation (doc. 11) is hereby ADOPTED IN ITS ENTIRETY. Petitioner's writ of habeas corpus pursuant to 28 U.S.C. § 2254 is DENIED WITH PREJUDICE (doc. 1). Furthermore a certificate of appealability SHALL NOT ISSUE with respect to Petitioner's claims alleged in grounds two and three of his Writ. However, a certificate of appealability SHALL ISSUE as to ground one found in Petitioner's Writ. Additionally, the Court GRANTS Petitioner leave

to appeal in forma pauperis upon a showing of financial necessity.

SO ORDERED.

Dated: October 14, 2005

s/S. Arthur Spiegel
S. Arthur Spiegel
United States Senior District Judge